



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

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2007 JUN 11 A 10:53

May 21, 2007

**SENSITIVE**

Cleta Mitchell, Esq.  
Foley & Lardner LLP  
3000 K Street, N.W., Suite 500  
Washington, D.C. 20007-5143

RE: MUR 5709  
Gallagher for Senate and  
Kenneth Lancaster, in his official  
capacity as treasurer

Dear Ms. Mitchell:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission found reason to believe that your client, Gallagher for Senate and Kenneth Lancaster, in his official capacity as treasurer, violated 2 U.S.C. § 434(b) and instituted an investigation in this matter.

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that a violation has occurred. Enclosed for your review is a brief stating the position of the General Counsel on the legal and factual issues of this matter.

You may file a brief stating your position on the issues and replying to the brief of the General Counsel. Your brief should be submitted to the Secretary of the Commission (ten copies if possible) within fifteen days of receipt of this notice. Three copies of your brief should also be forwarded to the Office of the General Counsel, if possible. The General Counsel's brief and any brief you will submit will be considered by the Commission before proceeding to a vote of whether there is probable cause to believe a violation has occurred. The Commission may or may not approve the General Counsel's recommendation.

If you are unable to file a responsive brief within fifteen days, you may submit a written request for an extension of time. All requests for extensions of time must be submitted in writing at least five days prior to the due date, and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not grant extensions greater than twenty days.

You also may request an oral hearing before the Commission. See Commission's "Policy Statement Establishing a Pilot Program for Probable Cause Hearings," 72 Fed. Reg. 7551 (Feb. 16, 2007). Hearings are voluntary, and no adverse inference will be drawn by the Commission

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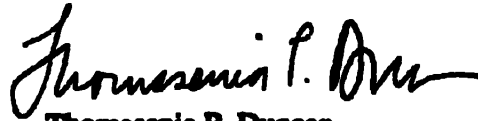
Cleta Mitchell, Esquire  
MUR 5709  
Page 2

based on a respondent's decision not to request such a hearing. Any request for a hearing must be submitted along with your reply brief and must state with specificity why the hearing is being requested and what issues the respondent expects to address. The Commission will notify you within 30 days of your request for a hearing as to whether the request has been granted.

If the Commission finds probable cause to believe a violation has occurred, the Office of the General Counsel will contact you and attempt, for a period of not less than thirty days, but not more than ninety days, to settle this matter through conciliation.

Should you have any questions, please contact Beth Mizuno at (202) 694-1650.

Sincerely,



Thomasenia P. Duncan  
General Counsel

cc: M. Grayson

Enclosure  
Brief

29044224692

1  
2 **BEFORE THE FEDERAL ELECTION COMMISSION**  
3

4  
5 In the Matter of )  
6 )  
7 Gallagher for Senate and ) MUR 5709  
8 Kenneth Lancaster, in his official capacity )  
9 as treasurer )  
10

11  
12 **GENERAL COUNSEL'S BRIEF**

13 **I. INTRODUCTION**

14 On February 24, 2006, the Federal Election Commission ("Commission") found reason  
15 to believe that Gallagher for Senate and Kenneth Lancaster, in his official capacity as treasurer  
16 (the "Committee"), violated 2 U.S.C. § 434(b) by failing to report disbursements totaling  
17 \$1,358,897 in the Committee's July 2004 Quarterly Report. Based on the following factual and  
18 legal analysis, this Office is prepared to recommend that the Commission find probable cause to  
19 believe that Gallagher for Senate and Kenneth Lancaster, in his official capacity as treasurer,  
20 violated 2 U.S.C. § 434(b).

21 **II. FACTUAL AND LEGAL ANALYSIS**

22 Gallagher for Senate is the authorized committee of Douglas Gallagher, a 2004 candidate  
23 for U.S. Senate in Florida. On July 15, 2004, the Committee filed a July Quarterly Report with  
24 disbursements totaling \$1,146,493. On September 9, 2004, it filed an amended July Quarterly  
25 Report with \$1,358,897 in additional disbursements. The Commission's Reports Analysis  
26 Division ("RAD") sent a Request for Additional Information to the Committee asking it to  
27 explain the \$1,358,897 increase in activity in the amended July Quarterly Report. The  
28 Committee explained that the disbursements reflected wire transfers for media purchases and  
29 stated that it discovered the disbursements when it reconciled its bank statements. RAD referred

1 the failure to disclose the disbursements for enforcement action and, on February 24, 2006, the  
2 Commission found reason to believe that the Committee violated 2 U.S.C. § 434(b) by failing to  
3 disclose the \$1,358,897 in disbursements in its original July Quarterly Report. On April 14,  
4 2006, the Committee submitted a written response that did not dispute the Commission's finding.

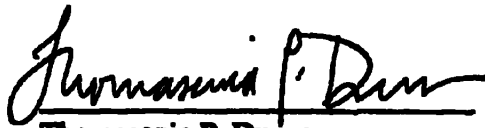
5 Pursuant to the Federal Election Campaign Act of 1971, as amended ("the Act"), in any  
6 calendar year during which there is a regularly scheduled election for which such candidate is  
7 seeking election, the treasurer of the candidate's principal campaign committee shall file a  
8 quarterly report for the period April 1 through June 30 (the July Quarterly Report). See 2 U.S.C.  
9 § 434(a)(2)(A)(iii). The quarterly report shall be filed no later than the 15th day after the last day  
10 of the calendar quarter, and must disclose, for the reporting period and the election cycle, the  
11 total of all disbursements and all disbursements in certain categories, along with the name and  
12 address of each person who has received any disbursements in an aggregate amount or value in  
13 excess of \$200 within the election cycle, together with the date and amount of any such  
14 disbursement. See 2 U.S.C. §§ 434(a)(2)(A)(iii) and 434(b)(4)-(6). The Committee's failure to  
15 disclose the \$1,358,897 in disbursements in its original July Quarterly Report thus constitutes a  
16 violation of 2 U.S.C. § 434(b).

17 Accordingly, this Office is prepared to recommend that the Commission find that there is  
18 probable cause to believe Gallagher for Senate and Kenneth Lancaster, in his official capacity as  
19 treasurer, violated 2 U.S.C. § 434(b).

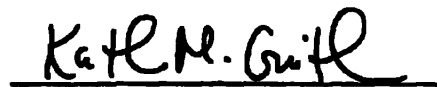
1 **III. RECOMMENDATION**

2 Find probable cause to believe that Gallagher for Senate and Kenneth Lancaster, in his  
3 official capacity as treasurer, violated 2 U.S.C. § 434(b).

4  
5 May 16, 2007  
6 Date

  
Thomasenia P. Duncan  
General Counsel

  
Ann Marie Terzaken  
Acting Associate General Counsel  
for Enforcement

  
Kathleen M. Guith  
Assistant General Counsel

  
Beth N. Mizuno  
Attorney